



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mammoth Firewood Company
File: B-223705
Date: September 4, 1986

DIGEST

1. Letter to agency which expresses dissatisfaction with a procurement action and seeks corrective action, is sufficient to constitute protest to agency.
2. A protest filed with the General Accounting Office more than 10 working days after the contracting agency denied the firm's agency-level protest is untimely and will not be considered.

DECISION

Mammoth Firewood Company (Mammoth) protests the manner in which the Forest Service, Department of Agriculture, conducted the Avalanche Fuelwood Sale in the Inyo National Forest. Mammoth contends that the Forest Service gave actual notice of the sale only to one contractor and inadequate notice of the sale to the general public, thus, allegedly ensuring that there would be no competition for the sale and that the preferred contractor would receive the award. Mammoth also contends that the Forest Service underestimated the cords of wood for sale and failed to identify the sale site properly, allegedly to discourage competition. From this record, it appears that the protester had no notice of the sale until June 7, 1986, 1 day after the sale occurred.

We dismiss the protest as untimely based on the contracting activity's report, in accordance with 4 C.F.R. § 21.3(f) (1986), which provides that when the propriety of a dismissal becomes clear only after information is provided by the contracting agency we will dismiss the protest at that time.

The record indicates that by letter of June 23, 1986, to the local ranger district, confirming a prior conversation, Mammoth complained about the conduct of the sale. Mammoth argued that the sale was not handled properly and that the

agency should not award based on this sale. Mammoth also stated that:

"As far as the sale goes, I am willing to withhold a formal protest pending your review of the sale. My only condition is that I be given sufficient time in which to file a protest prior to actual award of the sale - should you decide to allow matters to stand. Given the manner in which this timber sale was handled, I feel I really have no choice but to pursue the matter."

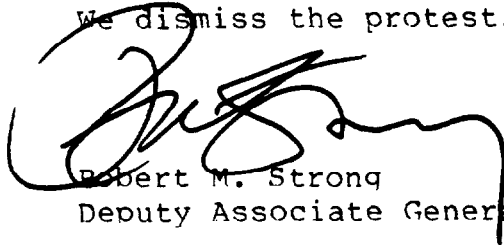
By letter of June 27, the district ranger advised Mammoth that after review of the sale the Forest Service concluded it was conducted properly in accordance with Forest Service Procedures for a sale of this type. He further advised that award would be made as planned. On July 22, Mammoth filed its protest with our Office.

In our view, Mammoth's letter of June 23 to the ranger district constituted an agency-level protest. Under our decisions, a letter does not have to state explicitly that it is intended as a protest for it to be so considered. At a minimum, the intent to protest must be conveyed by an expression of dissatisfaction and a request for corrective action. IBI Security Service, Inc., B-219713, Aug. 27, 1985, 85-2 C.P.D. ¶ 235. While, in its letter Mammoth states it is withholding a "formal protest" pending the agency's review of its complaint, the Mammoth letter expresses dissatisfaction with the sale procedures and also requests that the Forest Service take corrective action, that is, not award under this sale. Under these circumstances, we find the letter was an agency-level protest. Reeves Brothers Inc.; H. Landau & Co., B-212215.2; B-212215.3, May 2, 1984, 84-1 C.P.D. ¶ 490.

Our Bid Protest Regulations provide that if an initial protest has been filed timely with the contracting agency, we will consider a subsequent protest to this Office if it is filed within 10 working days after formal notification of or actual or constructive knowledge of initial adverse action. 4 C.F.R. § 21.2(a)(3) (1986). Although it is not clear when Mammoth received the agency's letter of June 27, in which its protest was denied, we generally estimate that it takes no more than 1 calendar week for mail to arrive, T.S. Head & Associates, Inc., B-220316, Sept. 30, 1985, 85-2 C.P.D. ¶ 368, which seems more than adequate here since the protester and the ranger district are both in the same town. Since Mammoth filed its protest on July 22, more than 10 working days after the presumed receipt of the denial of its protest, its protest is untimely. Langfur Construction Corp., B-221954, Feb. 27, 1986, 86-1 C.P.D. ¶ 207.

If we assume, on the other hand, that Mammoth's letter of June 23 to the ranger district was not an agency-level protest, its protest to our Office is nonetheless untimely. It is clear from the record that Mammoth had developed all the information underlying its basis of protest when it wrote to the ranger district on June 23. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), require that bid protests be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. Since Mammoth did not file its protest with our Office until July 22, more than 10 working days after it knew its basis of protest, its protest is untimely. Langfur Construction Corp., B-221954, supra.

We dismiss the protest.



Robert M. Strong
Deputy Associate General Counsel